IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRITS No. 4360 of 2004

SHARDA DEVI
V/S
STATE & ORS

Mr. JP JOSHI, for the petitioner

Date of Order : 6.10.2004

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the petitioner.

The petitioner seeks to challenge the notice Annexure-8 directing a meeting to be convened for consideration of No Confidence Motion moved against the petitioner moved on 13.9.2004.

The factual matrix is that according to para-1 of the writ petition, the petitioner was elected to the office of Chairman of Municipal Board, Mt. Abu in the year 1999. Thereafter, in the year 2003 i.e. vide order dt. 2.7.2003 she was placed under suspension which suspension continued in view of unsuccessful litigation in this Court, and ultimately vide order dt. 13.8.2004 Annexure-3 the petitioner was removed from the office consequent upon the departmental enquiry having been held, and by exercising powers under Section 63 and 64 of the Rajasthan Municipalities Act, 1959, hereinafter referred to as the Act. This order dt. 13.7.2004 came to be challenged before this Court by way of writ petition being S.B.Civil Writ Petition No. 3575/2004, and vide order dt. 25.8.2004 the operation of the order was ordered to remain stayed which stay is continued. According to the petitioner consequent upon this stay order, the petitioner claims to have assumed the charge of the office on 28.8.2004.

On these facts, the contention raised is on the anvil of language of Section 72(2) of the Act to the effect that since the petitioner has assumed the office on 28.8.2004 only, no confidence motion could not be moved within one year of such assumption, and therefore, the action of the Collector in issuing notice Annexure-8 is bad.

I have considered the submission, and may gainfully quote the provisions of Section 72 of the Act which reads as under:-

> "72 (1) Motion of non-confidence against Chairman- Motion expressing non-confidence in the Chairman or the Vice-Chairman shall be made and considered in the manner prescribed.
>
> (2) No notice of motion under this section shall be made within one year of the assumption of office by a Chairman or a Vice-Chairman.
>
> (3) If a motion under sub-section (1) is not carried, no notice of a subsequent motion expressing non-confidence in the same Chairman or Vice-Chairman shall be made until after the expiration of two years from the date of the meeting in which the motion was considered."

Under the scheme of things under the Municipalities Act, after the members are elected, they have to subscribe before the Collector an oath in the prescribed form under Section 61, and thereafter according to Section 65 the Chairman is to be elected in accordance with the Rules framed by the State Government in that behalf. According to Rule 79 of the Rajasthan Municipalities (Election) Rules, 1994, hereinafter referred to as the Rules of 1994", the meeting of members for election of a chairman is to be held in the office of the municipality at 10 A.M. on the day immediately succeeding the day on which the result of its members is declared provided however that the State Election Commission may, for reasons to be recorded in writing, direct such elections to be held on some other day and time as it deems fit. Thus, the chairman is elected immediately after declaration of the result of the election

electing members of the municipality and declaration of the result of election of Chairman has to be made in accordance with Rule 87(6) of the Rules of 1994. In my view, it is this election of the Chairman which is contemplated to be the starting point of time for computation of period of one year under Section 72(2) of the Act. The expression “assumption of office” has not been shown by the learned counsel to be defined anywhere in the other provisions of the Act.

The over all reading of Section 72 also makes it clear that the whole idea is that on the constitution of municipality it should be allowed to work peacefully at least for a period of one year, and the person choosing to move no confidence motion also have an opportunity to see the performance for one year. Likewise, provisions of sub-section (3) of Section 72 are also intended in the same direction by allowing the chairman to work peacefully, inasmuch as, if the first no confidence motion fails, then an immunity is granted for another period of two years, lest every now and then, the working of the municipality is always under the threat of no confidence motions, and the chairman or the elected municipality is not allowed to work at all.

Learned counsel tried to draw some analogy form the provisions of Section 69A of the Act, according to which in the event of the chairman resigning or ceases to be such chairman or is removed from or vacates the office or being placed under suspension or his election being declared void, is required to forthwith hand-over the charge in prescribed manner of the office including all papers and properties in his actual possession to the vice-chairman.

But then, even a look at entire provisions of Section 69A of the Act also does not show that it any where comprehends any such thing like “assumption of charge”, inasmuch as, according to sub-section (2) if a person fails or refuse to hand over charge of office as required under sub-section (1), the prescribed authority may, direct by order in writing the person so failing or refusing to handover such charge forthwith to the person entitled thereto under sub-section(1). Then according to sub-section (3) failure to hand over the charge in compliance of the directions issued under sub-section (2) is made punishable offence. Then according to sub-section (4) the prescribed authority or any officer empowered by him in this behalf has been

authorised to use such force as may be deemed necessary for enforcing the provisions of sub-section (1), and may for that purpose invoke in the prescribed manner the assistance of the police or the nearest Magistrate. Thus, even according to scheme of Section 69A of the Act, in any case, charge is required to be handed over, by whatever procedure as may be necessary, but then there is nothing like “assumption of charge”. In that view of the matter also, in my opinion, the “assumption of charge” is required to be construed to mean the initial assumption of charge after election as chairman.

In the present case, since even according to the petitioner she was elected as Chairman in the year 1999, and worked upto 2003 till she was suspended pending enquiry which enquiry ended against her, but then, the order of removal has been stayed, in that view of the matter, it cannot be said that simply because the petitioner started discharging functions of the chairman again consequent upon the order of this Court, it would amount to “assumption of charge” within the meaning of sub-section (2) of Section 72, so as to grant a fresh period of immunity of one year against moving of no confidence motion.

The writ petition, thus has no force, and is hereby dismissed summarily.

(N P GUPTA),J.

/Sushil/